IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

AS.No. 345 of 1994()

OS.4/1993 of SUB COURT CUM C.J.M., KAVARATTI
.....

APPELLANT:
---

1. B.MOOSA MANIKFAN, S/O.KANAKAFULEGE ALI, MANIKFAN, AGED 44 YEARS, BODUGANDEVAR, ALOODY VILLAGE, MINICOY, U.T. OF LAKSHADWEEP.

2. DR.S.MOHAMMED MANIKFAN, S/O.KANAKAFULEGE ALI, MANIKFAN, AGED ABOUT 50 YEARS, SAJI MANZIL,BODUGANDEVAR, ALOODY VILLAGE, MINICOY , U.T. LAKSHADWEEP.

BY ADV. SRI.C.S.ABDULSAMAD

RESPONDENTS:

SYNDICATE BANK, MINICOY, U.T. OF LAKSHADWEEP

BY ADV. SRI.S.R.DAYANANDA PRABHU,G.SIVAKUMAR

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 12/12/2006, ALONG WITH AS NO. 562 OF 1994 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M. Ramachandran & A.K. Basheer, JJ.

- - - - - - - - - - - - - - - - - - -

A.S.Nos.345 & 562 of 1994

- - - - - - - - - - - - - - - - - - -

Dated this the 12th day of December, 2006.

J U D G M E N T

Basheer,J:

These two appeals are at the instance of the plaintiff and defendants respectively, in a suit for realisation of money. The suit was decreed by the court below making the defendants jointly and severally liable to pay a sum of Rs.35,34,141.75 with interest at the rate of 23.25% per annum from the date of suit till the date of decree and with future interest at the rate of 12.5% per annum on the principal amount of Rs. 8.45 lakhs till the date of realisation. The plaintiff was allowed to recover the decreed amount by attachment and sale of the plaint A schedule vessel and the balance if any from the defendants personally or from other properties.

2. In A.S.562/1994 the sole grievance of the appellant-plaintiff is about the rate of interest awarded on the principal sum from the date of decree till the date of realisation. It is contended that future interest should have been granted at the rate of 23.25% per annum from the date of decree till realisation on the sum of Rs.35,34,141.75. It is pointed out that the contract entered into between the parties clearly stipulated that the defendants would be liable to pay interest at the rate of 23.25% per annum and therefore the court below ought to have awarded interest at the above rate. The other contention is that interest ought to have been granted on the sum of Rs.35,34,141.75 and not on

the principal sum of Rs.8.45 lakhs. We are unable to agree.

3. It may be true that the contractual rate of interest was 23.25% per annum. The court below had awarded interest at the above rate from the date of suit till the date of decree. But the post decretal interest was fixed at 12.5% per annum. The proviso to Section 34 postulates that the rate of future interest payable from the date of decree "may" exceed 6% per annum. In our view, the discretion exercised by the court below in the facts and circumstances of the case does not appear to be arbitrary or illegal at all. No interference is therefore warranted in this regard.

4. In AS.345/04 it is primarily contended by the appellants-defendants that the court below had committed serious illegality in granting a decree to the plaintiff without affording sufficient opportunity to the appellants to defend their case. It is contended that the defendants had not been served with notice from the trial court. It is further contended that the court below ought to have shown more sympathy to the appellants-defendant since they belong to Scheduled Tribe community and also since they were staying in a far off place in Minicoy Island.

5. We have carefully perused the materials available on record. The court below had set the appellants-defendants ex parte since they had failed to appear before the court when the case was posted for trial. The records reveal that sufficient opportunity had been afforded to the appellants-defendants.

6. When this appeal is taken up today for consideration, neither the appellant nor the counsel is present. Nevertheless, we have

examined the merit of the contentions raised by the appellants with reference to the records placed before us. Respondent/plaintiff had satisfactorily established their case with cogent evidence supported by documents. The contentions raised by the appellants in the memorandum of appeal are superfluous and vague. No cogent reasons have been brought to our notice warranting interference. There is no merit in any of the contentions. The appeal preferred by the defendants is also bound to fail.

In the result both the appeals are dismissed. No costs.

M. Ramachadran
Judge.

A.K. Basheer
Judge.

an.

M. Ramachandran
&
A.K. Basheer, JJ.

A.S.No. 345 & 562 of 1994

Judgment

12/12/2006.